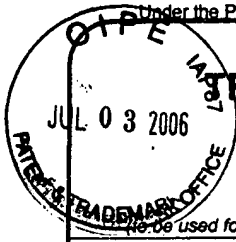


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FORM

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Application Number

10/601,602

Filing Date

June 23, 2003

First Named Inventor

Jackson, J.R.

Art Unit

1742

Examiner Name

WILKINS, III, H.D.

Attorney Docket Number

FC-10

ENCLOSURES (Check all that apply)

☐

Fee Transmittal Form

☐

Fee Attached

☐

Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

☐

Extension of Time Request

☐

Express Abandonment Request

☐

Information Disclosure Statement

☐

Certified Copy of Priority Document(s)

☐Reply to Missing Parts/
Incomplete Application☐Reply to Missing Parts
under 37 CFR 1.52 or 1.53☐

Drawing(s)

☐

Licensing-related Papers

☒

Petition

☐

Petition to Convert to a

Provisional Application

☐

Power of Attorney, Revocation

Change of Correspondence Address

☐

Terminal Disclaimer

☐

Request for Refund

☐

CD, Number of CD(s) _____

☐

Landscape Table on CD

☐

After Allowance Communication to TC

☐Appeal Communication to Board
of Appeals and Interferences☐Appeal Communication to TC
(Appeal Notice, Brief, Reply Brief)☐

Proprietary Information

☐

Status Letter

☐Other Enclosure(s) (please identify
below):

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Andrew E. Pierce, Patent Attorney

Signature

Andrew E. Pierce

Printed name

Andrew E. Pierce

Date

June 29, 2006

Reg. No.

26017

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FC-10 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant: Jackson et al.

Examiner: WILKINS III., H.D.

Serial No.: 10/601,602

Group Art Unit: 1742

Filing Date: June 23, 2003

For: Low Energy Chlorate Electrolytic Cell and Process

PETITION TO DIRECTOR UNDER 37 CFR 1.181 (a) (1) & (3)

Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Applicants hereby petition the Director to invoke his supervisory authority and ask that the above Examiner of Group 1742 be instructed to enter the proposed Amendment under Rule 1.116 and the Affidavit under Rule 1.132, each filed on June 2, 2006.

The action complained of is the Examiner's Advisory Action, mailed on June 14, 2006, in response to the submission of the Amendment under Rule 1.116. No petition fee is due with this petition which is timely, as filed within two months after

said Examiner's Advisory Action. A petition was filed on June 12, 2006 for a one month Extension of Time for response to the final rejection, mailed March 15, 2006. A Notice of Appeal is being filed concurrently with this petition.

REMARKS

1. In the Examiner's Advisory Action, the Examiner declined to enter the proposed, timely filed Amendment (incorporated herein by reference) submitted after final rejection and further advised that upon the filing of a Notice of Appeal, the Affidavit (incorporated herein by reference) submitted with the proposed amendment will not be entered.

2. The Examiner cites the Applicants' Amendment under Rule 1.116, in the paragraph spanning pages 13 and 14, as basis for his refusal to enter the Amendment. In fact, this paragraph, referred to out of context, provides no proper basis for the Examiner's refusal since, instead of only stating that the proposed, Jepson form claim amendments distinguish over the references cited, the Applicants have also consistently stated throughout the prosecution that the non-Jepson form preambles of original claim 8 and added claim 34 distinguish over the references cited by the Examiner. Thus, the Jepson claim format preambles in the proposed


amended claims 8 and 34 are not considered to change the scope of the pending claims, as the Examiner contends.

In accordance with the application of Rule 1.116 (b) (2), the Applicant's Amendment which merely places the pending claims in better form for appeal can be entered after final rejection. For further discussion, see the Amendment under Rule 1.116, page 11, part A et seq. In accordance with the application of Rule 1.116 (b) (3), even if the Applicant's Amendment touches the merits (which is denied), it may be admitted upon a sufficient showing, which is considered to have been made in the Amendment. For further discussion, see the Amendment under Rule 1.116, page 14, part B et seq.

3. The Affidavit submitted with the Amendment under Rule 1.116 should be entered as evidence to overcome the baseless presumption of the Examiner that one skilled in this art would require undue experimentation to determine which of the commercially available Nafion membranes would fall within the scope of the pending claims. As noted on page 3 of the Affidavit and in the Amendment under Rule 1.116, (see the paragraph spanning pages 20 and 21) one skilled in this art would know the properties of the Nafion membranes and undue experimentation would not be required to select the useful membranes.

4. The proposed Amendment after final rejection which was submitted to place the pending claims in better form for appeal should be entered. The Affidavit should be entered as evidence of the knowledge of one skilled in this art and to overcome the baseless presumption of the Examiner regarding what one skilled in this art would know about the properties of Nafion permselective membranes. Instruction of the Examiner to enter the Amendment and Affidavit is respectfully requested.

Respectfully submitted,


Andrew E. Pietce
Attorney for Applicants

June 29, 2006
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